2407

SUPREME COURT OF THE UNITED STATES.

No. 181.

SMITH HOGAN AND AL., PLAINTIFFS IN ERROR,

vs.

AARON ROSS, WHO SUES FOR THE USE OF ROBERT PATTERSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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GIDEON, Printer.

Exemplication.

AARON ROSS, who sues for the use of Robert Patterson,
vs.
SMITH HOGAN, Arthur S. Hogan, and Reuben Y. Reynolds.

Pleas had at a district court of the United States, for the northern district of Mississippi, began and held at the town of Pontotoc, in said district, on the first Monday of June, A. D. 1845.

Present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 27th day of May, A. D. 1848, Aaron Ross, for the use of Robert Patterson, both of whom are citizens of the State of Pennsylvania, sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, his certain summons, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summons Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to Aaron Ross, a citizen of the State of Pennsylvania, who sues for the use of Robert Patterson, also a citizen of the State of Pennsylvania, of a plea that they render unto him the sum of six thousand three hundred and fifty-four and $\frac{10}{100}$ dollars, which to him they owe, and from him unjustly detain, to his damage four thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at
[L. S.] Pontotoc, the first Monday of December, A. D. 1844, and 69th year of the independence of the United States.

Issued the 27th day of May, 1845.

G. M. RAGSDALE, *Clerk.*

Which said summons is endorsed as follows, to wit:

This is an action of debt, and is funded on what is commonly called an injunction bond, executed by defendants on the 30th day of September,

A. D. 1842, to one Aaron Ross, in the penal sum of six thousand three hundred and fifty-four and $\frac{10}{100}$ dollars, to secure said Ross in the payment of the sum of $3,177 $\frac{50}{100}$, with interest thereon from 11th day of December, 1839; and also all such damages and costs as said Ross might sustain by the wrongful suing out said injunction on the day first above mentioned.

Sum demanded is amount last above mentioned with interest, damages, and costs as aforesaid; declaration filed at issuance of this writ; judgment required at return term hereof.

G. M. RAGSDALE, *Clerk.*

Upon which said summons the marshal made the following return, to wit, came to hand May 27th, 1845; executed same day on R. Y. Reynolds; other defendants not found.

Ext., ent., and retg. -	2 50
Copy - - -	1 00
Mileage - - -	2 00
	$5 50

ANDREW A. KINCANNON,
Marshal, northern district Miss.
By A. BEAN, *Deputy.*

At the issuance of said summons the plaintiff, by attorney, filed his certain declaration in the words and figures following, to wit:

United States of America, district court of the United States for the northern district of Mississippi, to June term, A. D. 1845.

Aaron Ross, a citizen of the State of Pennsylvania, who sues for the use of Robert Patterson, also a citizen of said State of Pennsylvania, by attorney, complains of Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds, citizens of the State of Mississippi, residing within the said northern district, summoned to answer said plaintiff of a plea that to him they render the sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars, which to him they owe, and from him unjustly detain. For that whereas, heretofore, to wit, on the 30th day of September, A. D. 1842, in the said district, the said defendants, by their certain writing obligatory, sealed with their several seals, and now shown to the court here, the date whereof is the day and year last aforesaid, acknowledged themselves to be firmly held and bound unto the said plaintiff in the said sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars, lawful money of the United States, for the payment of which sum, to the said Aaron, they thereby, then and there, bound themselves, their heirs, executors, administrators, and assigns, jointly and severally, subject to the following conditions: For that whereas the above bound Smith Hogan hath this day sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, a writ of injunction, strictly enjoining and prohibiting the

said Aaron Ross, his agents or attorneys, from further proceeding upon an execution now in the hands of the marshal of the northern district of Mississippi, which issued from said court on a judgment rendered at the June term, A. D. 1840, of said court, against George Wightman and Smith Hogan, in favor of the said Aaron Ross, for the sum of three thousand one hundred and seventy-seven dollars and five cents, with interest thereon from the 11th day of December, A. D. 1839. Now, if the said Smith Hogan shall prosecute said writ of injunction to effect, or in case of his failure so to do, shall well and truly pay unto the said Aaron Ross, all such damages and costs as he may sustain by the wrongful suing out of said injunction, and shall further perform and abide by the decree of the circuit court of the United States, for the southern district of Mississippi, which may be hereafter rendered in the premises, then this obligation to be null and void, otherwise to remain in full force and effect. And plaintiff avers that the said Smith Hogan hath not prosecuted his said writ of injunction to effect, but the same was dissolved, and the bill of the said Smith, by said court, dismissed; nor hath the said Smith paid unto plaintiff his damages and costs, sustained by plaintiff in consequence of the wrongful suing out by said Smith of the said writ of injunction, which costs and damages plaintiff doth here aver to be the amount of said judgment so enjoined by the said Smith, and interest thereon from the 11th day of December, A. D. 1839, which said judgment, or any portion of the same, hath not hitherto been satisfied by the parties thereto, or by either of them, that is to say, by the said George Wightman or the said Smith Hogan, or by any person or persons for them and in their behalf; and the benefit of the said judgment hath been and is entirely lost unto said plaintiff in consequence of the wrongful suing out of said injunction by the said Smith; but to perform the conditions to his said writing obligatory annexed, and each "of" every of them, the said Smith hath hitherto wholly neglected and refused, whereby an action hath accrued to the said plaintiff to demand of the said defendants the said sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars in said obligation mentioned; yet the said defendants, though often requested, have not, nor hath either of them, hitherto paid unto plaintiff the said sum of money, or any part thereof, but to pay the same they have, and each of them hath, hitherto wholly neglected and refused, to plaintiff's damage of four thousand dollars, and therefore he sues, &c. EVANS & TOPP, *Attorneys.*

Copy of the bond sued on in this case, as follows, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, U. S.

SMITH HOGAN et al., complainants,
vs.
AARON ROSS, defendant. } In chancery.

Copy of injunction bond.

Know all men by these presents, that we, Smith Hogan, Arthur Hogan, and Reuben Y. Reynolds are held and firmly bound unto Aaron Ross in the penal sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars, lawful money of the United States of America; for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 30th day of September, A. D. 1842.

The condition of the above obligation is such, that whereas the above bound Smith Hogan hath this day sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, a writ of injunction, strictly enjoining and prohibiting the said Aaron Ross, his agents or attorneys, from further proceeding upon *a* execution now in the hands of the marshal of the northern district of Mississippi, which issued from said court on a judgment rendered at the June [term,] A. D. 1840, of said court, against George Wightman and Smith Hogan, in favor of the said Aaron Ross, for the sum of three thousand one hundred and seventy-seven dollars and five cents, with interest thereon from the 11th day of Dec'r, 1839.

Now, if the said Smith Hogan shall prosecute said writ of injunction to effect, or in case of his failure so to do, shall well and truly pay unto the said Aaron Ross all such damages and costs as he may sustain by the wrongful suing out said injunction, and shall further perform and abide by the decree of the circuit court of the United States, for the southern district of Mississippi, which may be hereafter rendered in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

SMITH HOGAN, [SEAL.]
ART. S. HOGAN, [SEAL.]
REUBEN Y. REYNOLDS, SR. [SEAL.]

Test: G. M. RAGSDALE.

UNITED STATES OF AMERICA,
Southern district of Mississippi,

Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify the foregoing to be a true and correct copy of the injunction bond in the above stated case, as the same now remains on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, this 26th day of Nov'r, A. D. 1844.

W. H. BROWN, *Cl'k.*
Per C. H. ROGERS, *D. C.*

Defendant's plea filed June the 4th, 1845, as follows, to wit:

District court of U. S., June term, 1845.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

AARON ROSS, use, &c., }
vs. }
SMITH HOGAN et al. }

1*st plea.*

And the defendants come and defend the wrong and injury, when, &c., and for plea say, that they have prosecuted their said injunction to effect; that the same was not dissolved, and the said bill was not dismissed by said court, and *this they* put themselves upon the country, &c.

2*d.*

And for further plea in this behalf the defendants say, actio non, because they say the plaintiffs were not damnified or in any manner injured, by the failure of the defendants to prosecute their said injunction, and this they are ready to verify; wherefore they pray judgment, &c.

3*d.*

And for further plea in this behalf the defendants say actio non, because they say they have fully, well, and truly performed all the conditions in said bond specified, and this they are ready to verify; wherefore they pray judgment, &c.

REUBEN DAVIS, *Atto. for def't.*

Plaintiff's demurrer to defendants' 2d and 3d pleas, filed June 6th, 1845, in the words and figures following, to wit:

United States of America, district court of the United States, for the northern district of Mississippi, June term, A. D. 1845.

AARON ROSS, who sues for the use of }
Robert Patterson, } Demurrer.
vs. }
SMITH HOGAN and others. }

And the said plaintiff, as to the said pleas of said defendants by them secondly and thirdly above pleaded, saith that the same and the matters therein contained, in manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his said action thereof against the said defendants, and that the said plaintiff is not bound by law to answer the same, and this the said plaintiff is ready to verify; wherefore, by reason of the insufficiency of the said second and third pleas in this behalf, the said plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained, on occasion of the detention thereof, to be

adjudged to him, &c. And the said plaintiff, for cause of demurrer to the said pleas, assigns the following, to wit:

1st. Said pleas are no answer to the action.

2d. Said defendants have not in and by their said second or third pleas, confessed or avoided, or traversed and denied, that they owe to the said plaintiff the said debt of $6,354 10, above demanded, or any part thereof.

3d. Said pleas are pleaded as if the declaration had been a declaration in covenant, whereas the same is in debt.

4th. Said 3d plea avers performance generally of the conditions of said injunction bond, whereas the said defendants should have showed, in and by their said 3d plea, how, when, and in what manner they have performed the condition thereof.

5th. Said pleas are insufficient and defective in substance and in form, &c. EVANS & TOPP, *Atty's for pl'ffs.*

Endorsed: Demurrer sustained. S. J. GHOLSON.

Afterwards, to wit, on the 6th day of June, being a day of the June term, A. D. 1845, of said court, the following proceedings were had in the foregoing cause, to wit:

Friday, June the 6th, 1845.

AARON ROSS, use, &c., vs. SMITH HOGAN et al. } 401.

It appearing to the satisfaction of the court that the summons in this case has not been executed upon defendants, Smith Hogan and Arthur S. Hogan, it is therefore ordered by the court that an alias summons issue for them, and that this cause be continued.

Also, afterwards, to wit, on the day and term aforesaid, the further proceedings were had in the foregoing cause, to wit:

Friday, June the 6th, 1845.

AARON ROSS, use, &c., vs. SMITH HOGAN et al. } 401.

This day again came the parties, by their attorneys, and thereupon came on to be heard plaintiff's demurrer to defendants' 2d and 3d pleas; and, after argument, it is considered by the court that said demurrer be and the same is hereby sustained, and that this cause be continued with leave for defendants to plead over.

Alias summons issued July 5th, 1845, in obedience to order of court, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss.

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, as heretofore, without delay to summon Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds, that they be and

appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to Aaron Ross, a citizen of the State of Pennsylvania, who sues for the use of Robert Patterson, also a citizen of Pennsylvania, of a plea that they render unto him the sum of six thousand three hundred and fifty-four and $\frac{10}{100}$ dollars, which to him they owe and from him unjustly detain, to his damage four thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1845, and 69th year of the independence of the United States. Issued the 5th day of July, 1845.

G. M. RAGSDALE, *Clerk.*

Said alias summons is endorsed as follows, to wit:

This is an action of debt, and is founded on what is commonly called an injunction bond, executed by defendants on the 30th day of September, A. D. 1842, to one Aaron Ross, in the penal sum of six thousand three hundred and fifty-four and $\frac{10}{100}$ dollars, to secure said Ross in the payment of the sum of $3,177\frac{5}{100}$, with interest thereon from 11th day of Dec'r, 1839, and also all such damages and costs as said Ross might sustain by the wrongful suing out said injunction on the day first above mentioned. Sum demanded is amount last above mentioned, with interest, damages and costs, as aforesaid. Declaration filed at issuance of former writ. Judgment required at return term hereof.

G. M. RAGSDALE, *Clerk.*

"Former summons having been executed on within named Reynolds, the marshal will serve this on other defendants only.

G. M. RAGSDALE, *Clerk.*"

Upon which said alias summons the marshal made the following return, to wit:

"Came to hand the 15th July, 1845. Received 11th August, 1845.

A. A. KINCANNON, *Marshal no. dist., Miss.*

By A. BEAN, *Deputy marshal.*

Marshal's fees—Execution entered, and return writ	-	$3 00
Copy - - - - -	-	0 50
Mileage - - - - -	-	3 00
		$6 00

A. A. KINCANNON, *Marshal.*

Executed the 14th November, 1845.

Afterwards, to wit, on the 3rd day of December, being a day of the December term, 1845, of said court, the following proceedings were had in the foregoing cause, to wit:

Wednesday, December 3d, 1845.

AARON ROSS, use, &c., vs. SMITH HOGAN et al. } 401.

By consent of parties, and the agreement of their attorneys to make up the pleadings in this case in vacation, it is ordered by the court that the same be continued until the next term thereof. Defendants' demurrer to plaintiff's declaration, filed June the 3d, 1846, in the words and figures following, to wit:

AARON ROSS, use, &c., vs. SMITH HOGAN and others. }

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and say that the said declaration, and the matters and things therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the defendants, and that they, said defendants, are not bound by the law of the land to answer the same, and this they are ready to verify; wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendants pray judgment; and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them; and the said defendants, according to the statute in such case made and provided, state and show to the court the following causes of demurrer, to wit:

I. Because there is no cause of action stated or shown in and by said declaration as against these defendants.

II. There is no sufficient breach of the condition of the said supposed bond in the declaration mentioned, assigned as against these defendants.

III. Because it is no where stated or averred in said declaration, that the circuit court of the United States for the southern district of Mississippi, upon the dismissal of said injunction, decreed, or otherwise awarded, any damages against the said Smith Hogan for the wrongful suing out of the same.

IV. Because it is no where stated or averred that said circuit court made any decree in said cause, which the said Smith Hogan has failed to comply with.

V. Because it is no where stated or shown that any damages have been ascertained, which the said plaintiff has sustained by reason of the wrongful suing out of said injunction.

VI. Because it is no where stated, averred, or shown, the amount of damages and costs which the said plaintiff has sustained by reason of the suing of said injunction by the said S. Hogan.

VII. Because the said declaration is in other respects insufficient and informal.

DAVIS & GOODWIN, *Att'neys for defendants.*

Agreement of counsel filed at June term, 1846, as follows, to wit:

AARON ROSS, use, &c., }
vs.
SMITH HOGAN and others. }

June term, 1846.

In this case it is agreed that the court may take the questions arising upon the demurrer under advisement, and determine the same in vacation. Should the demurrer be sustained or overruled, the case to be prepared for trial by the next term of this court, 3d June, 1846.

DAVIS & GOODWIN, *Att'neys for def'ts.*
JOHN S. TOPP.

Afterwards, to wit, on the 3d day of June, being a day of the June term, 1846, of said court, the following proceedings were had in the foregoing cause, to wit:

AARON ROSS, use, &c., }
vs. } 401.
SMITH HOGAN et al. }

Wednesday, June 3d, 1846.

By agreement of counsel, the demurrer in this case is taken under advisement by the court, to be determined in vacation, and this case is continued.

Afterwards, to wit, on the 10th day of December, being a day of the December [term,] 1846, of said court, the following proceedings were had in the foregoing cause, to wit:

AARON ROSS, use, &c., }
vs. } 401.
SMITH HOGAN et al. }

Thursday, December 10th, 1846.

It is ordered by the court that defendants' demurrer to plaintiff's declaration, submitted at last term, be, and the same is hereby, sustained, and leave given plaintiff to amend declaration. Plaintiff's amended declaration filed by leave of the court, December the 10th, 1846, in the words and figures following, to wit:

United States of America, district court of the United States for the northern district of Mississippi, December term, A. D. 1846.

Aaron Ross, a citizen of the State of Pennsylvania, who sues for the use of Robert Patterson, who is also a citizen of the State of Pennsylvania, by attorney, complains of Smith Hogan, Arthur S. Hogan, and Reuben T. Reynolds, senior, citizens of the State of Mississippi, residing in the northern district aforesaid, summoned to answer said plaintiff of a plea, that they render unto him the sum of six thousand three hundred and fifty-four $\frac{10}{100}$, dollars which to him they owe, and from him unjustly detain—$6,354 10.

For that, heretofore, to wit, on the 30th day of September, A. D. 1842, in the district aforesaid, the said defendants made their certain writing obligatory of that date, sealed with their seals, and here to the court produced and shown, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff in the sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars, lawful money of the United States, for the payment of which sum to the said Aaron Ross, they, the said defendants, thereby, then and there, bound themselves, jointly and severally; the said Arthur S. Hogan, by the name and style of Arthur S. Hogan; and the said defendant, Reynolds, by the name and style of Reuben T. Reynolds, senior. And the said defendants then and there delivered said writing obligatory to G. M. Ragsdale, esq., clerk of the United States district court for said northern district, for the use and benefit of the plaintiff, with the conditions thereunto annexed, which are as follows, to wit: The condition of the above obligation is such, that whereas the above bound Smith Hogan hath this day sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi, a writ of injunction, strictly enjoining and prohibiting the said Aaron Ross, his agents or attorneys, from further proceedings upon a execution, now in the hands of the marshal of the northern district of Mississippi, which issued from said court on a judgment rendered at the June term, A. D. 1840, of said court, against George Wightman and Smith Hogan, in favor of the said Aaron Ross, for the sum of three thousand one hundred and seventy-seven dollars and five cents, with interest thereon from the 11th day of December, 1839. Now, if the said Smith Hogan shall prosecute said writ of injunction to effect, or, in case of his failure so to do, shall well and truly pay unto the said Aaron Ross all such damages and costs as he may sustain by the wrongful suing out said injunction, and shall further perform and abide by the decree of the circuit court of the United States for the southern district of Mississippi, which may be hereafter rendered in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed) SMITH HOGAN, [SEAL.]
ART. S. HOGAN, [SEAL.]
REUBEN T. REYNOLS, Sen. [SEAL.]

Test—G. M. RAGSDALE.

And the plaintiff avers that the said defendant, Smith Hogan, did not prosecute his said writ of injunction to effect in the circuit court of the United States for the southern district of Mississippi, but afterwards, to wit, at the November term, A. D. 1843, of said circuit court, dismissed the same. By means of the wrongful suing out the said injunction the plaintiff says he has sustained damages and costs to the amount of four thousand dollars; and the said plaintiff further avers that since the dismissal of said injunction by the said Smith Hogan, and since the plaintiff hath sustained the damages and costs aforesaid, neither the said Smith Hogan nor either of said defendants, nor any other person

hath paid to the said plaintiff the damages and costs aforesaid sustained by him. Nor have the said defendants, or either of them, nor any person for them, paid to the said plaintiff the amount of the said judgment which he, the said plaintiff, hath recovered against George Wightman and Smith Hogan, at the June term, 1840, of said district court for the northern district of Mississippi, for the sum of $3,177 05, with interest and costs thereon from the 11th day of December, 1839.

By means whereof the said defendants became jointly and severally liable to pay to the plaintiff the said sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars above demanded.

2nd count. And whereas also, heretofore, to wit, on the 30th day of September, A. D. 1842, in the district aforesaid, the said defendants by the way and style of Smith Hogan, [L. S.] Art. S. Hogan, [L. S.] and Reuben T. Reynolds, sr., [L. S.] made their certain writing obligatory of that date, sealed with their seals, and here to the court produced and shown, the date whereof is the day and year aforesaid, whereby they, the said defendants, acknowledged themselves to be held and firmly bound unto the plaintiff in the penal sum of six thousand three hundred and fifty-four $\frac{10}{100}$ dollars, lawful money of the United States of America; for the payment of which, well and truly to be made and done, the said defendants bound themselves, their heirs, executors, and administrators, and assigns, jointly and severally; and then and there delivered the same to G. M. Ragsdale, for the use and benefit of the plaintiff. By means whereof the said defendants became liable and bound to pay the same to the said plaintiff. Yet the said defendants, though often requested, have not, nor have either of them, paid to the plaintiff the said sums of money in said writing obligatory specified, nor any part thereof, but to pay the same have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of the plaintiff of four thousand dollars; wherefore he sues, &c.

EVANS & TOPP & MILLER,
Pltf Plaintiff.

Defendants' pleas filed Dec. 11th, 1846, and plaintiff's replications thereto filed same time, as follows, to wit:

"UNITED STATES OF AMERICA,

In the district court of the United States, for the northern district of Mississippi, at the Dec. term, 1846.

"AARON ROSS, use, &c.,
vs.
SMITH HOGAN & others.

1. And the said defendants, by leave of the court first had by attorney, come and defend the wrong and injury, when, &c., and say actio non, because they say that they have prosecuted their said injunction with effect, and this they pray may be inquired of by the country, &c.; "and the plaintiff likewise. T. & M."

2. And for further plea in this behalf the said defendants say *actio* non, &c., because they say that the said plaintiff was not damnified or in any manner injured by the wrongful suing out of said injunction by the said Smith Hogan, and this they are ready to verify; wherefore they pray judgment, &c.

"Replication and issue in short by consent.

TOPP & MILLER.

3. And for further plea in this behalf the said defendants say actio non, because they say they have fully, well, and truly performed all and singular the conditions in said bond specified, and this they are ready to verify; wherefore they pray judgment, &c.

"Replication and issue in short by consent.

TOPP & MILLER."

4. And for further plea in this behalf the said defendants say actio non, because they say they have fully, well, and truly performed all and singular the conditions in said bond specified in this, to wit, that on the day of 184 , at the district aforesaid, the said plaintiff sued out of the office of clerk of said district court a writ of fieri facias, founded on the judgment in the bond and declaration mentioned, which on the day and year aforesaid went into the hands of the marshal of said district to be executed and returned according to law. And the said defendants aver that said marshal, by virtue of said execution, did levy and make of the property, goods, and chattels, of said defendant, Smith Hogan, a large sum of money, to wit, the sum of four thousand dollars, and this they are ready to verify; wherefore they pray judgment, &c.

5. And for further plea in this behalf the said defendants say actio non, because they say that the judgment upon which the execution issued, and to enjoin which the supposed injunction bond upon which this suit is founded was executed, was fully paid off, satisfied, and discharged, and before the issuance of the execution enjoined, to wit, on the first day of June, A. D. 1842, at, to wit, in the district aforesaid, and this they are ready to verify; wherefore they pray judgment, &c.

DAVIS & GOODWIN.

Attorneys for Plaintiff.

"Replication and issue.

TOPP & MILLER.

Replication to 4th plea.

"UNITED STATES OF AMERICA,

District court, northern district of Mississippi.

AARON ROSS, use, &c.,
vs.
SMITH HOGAN et al.

And said plaintiff, by attorney, comes, and &c., and, says, as to the plea of said defendants by them fourthly above pleaded, precludi non,

&c., because, he says, that although the writ of fieri facias, founded upon the judgment of the plaintiff in said plea mentioned, was levied upon two negroes as the property of Smith Hogan, one of the defendants therein, yet said plaintiff says that the said two negroes were levied upon by the marshal of said northern district, at the same time, by virtue of sundry writs of fieri facias, founded on judgments recovered in said district court against said defendant, Smith Hogan, to wit, one in favor of Stephen Davis for $1,194 20, two in favor of James A. Hendon, one for $1,194 20, and the other for $3,582 60, and one in favor of Fellows, Wordworth & Co., for the sum of $2,172 46, numbered 23, 24, 25 and 26; and the said two negroes being afterwards sold by said marshal, by virtue of said several writs of fieri facias, together with the writs of fieri facias founded upon the judgment of said plaintiff; yet said plaintiff avers that the sum of money, to wit, the sum of eleven hundred and seventy-*eight* dollars raised by the sale of the said negroes by virtue of the writs aforesaid, was by the order of said district court, to wit, at the June term, 1844, thereof, applied and appropriated to the payment and satisfaction of said other writs of fieri facias above mentioned; and said plaintiff avers that no portion of said sum of money raised as aforesaid was appropriated or applied to the payment or satisfaction of said writ of fieri facias founded upon the judgment of plaintiff in said plea mentioned; wherefore said plaintiff says he has not had any satisfaction of his said judgment, mentioned in said plea, and this he is ready to verify, &c.; wherefore he prays judgment, &c.

TOPP & MILLER,
For Plaintiff.

Plaintiff's demurrer to defendants' 2nd and 3rd pleas, defendants' "rejoinder, plaintiff's demurrer to rejoinder," and defendants' "joinder in demurrer to rejoinder," all filed on the aforesaid 11th December, 1846, in the words and figures following, to wit:

AARON ROSS, use &c.,
vs.
SMITH HOGAN & others.

And the said plaintiff, as to the said pleas of the said defendants by them secondly and thirdly above pleaded in this behalf, says, he is not bound by the law of the land to reply to the same; and for causes of demurrer to said second plea the plaintiff states and sets forth the following, to wit:

1st. Said second plea tenders an issue to an immaterial matter, and not directly put in issue by the declaration.

2d. The said second plea is not responsive to the averments in the declaration mentioned; the plaintiff does not complain that said defendants failed to prosecute their said injunction with effect; the gravamen in the declaration of plaintiff is this, that the defendant, Smith Hogan, wrongfully obtained and sued out the injunction by which the plaintiff was hindered and delayed in the collection of his said judgment.

3d. And the said plea is in other respects informal and insufficient &c.

EVANS & TOPP & MILLER, *for plaintiff.*

And for cause of demurrer to said third plea, plaintiff shows following causes:

1st. Said plea only alleges general performance of the conditions of the bond, when special breaches are assigned in the declaration.

2d. And is otherwise informal and insufficient.

EVANS & TOPP & MILLER, *for plaintiff.*

Rejoinder.

UNITED STATES OF AMERICA,
District court, northern district of Mississippi.

December term, 1846.

AARON ROSS, use, &c.,
vs.
SMITH HOGAN and others.

And the said defendants, as to the replication of the said plaintiff to the fourth and *sixth* pleas of the said defendants, say, that the said plaintiff ought not, by reason of anything by them in said replications alleged, to have or maintain their aforesaid action thereof against them, because they that the other writs of fieri facias founded on judgments recorded in said district court against the defendant, as described and set forth in said replication, were younger in point of time than the judgment and execution founded thereon in the plea mentioned. And the said defendants in fact say, that the said plaintiff, by virtue of the execution founded upon the judgment against one George Wightman and Smith Hogan, being the execution in the declaration and fourth and sixth pleas mentioned, and which judgment was rendered and recorded in said district court, at the June term thereof, 1840, the said marshal did make and levy of the *of the* proper goods and chattels of the defendant, Smith Hogan, the said sum of four thousand dollars in said plea mentioned. And the said defendants in fact further say, that the judgment upon which the execution issued, as mentioned and set forth in said replications to the fourth and sixth pleas of the said defendants, were not rendered and recorded in said court until the times as hereinafter mentioned, to wit, the judgment in favor of James A. Haden, at the June term, 1842, of said district court; the judgment in favor of Stephen Davis, at the June term, 1842; the judgment in favor of Fellows, Wadsworth & Co., at the June term, 1842, of said district court; and so the said defendants in fact say, that the said plaintiff hath obtained payment and satisfaction of his said execution in the said replications mentioned, and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against these defendants.

DAVIS & GOODWIN, *Att'ys for plaintiff.*

Demurrer to rejoinder.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

United States district court, December term, 1846.

AARON ROSS, use, &c.,
vs.
SMITH HOGAN, Arthur Hogan, and Reuben T. Reynolds, sr.

And the said plaintiff, as to the said rejoinder by the said defendants to plaintiff's replication to the fourth and sixth pleas by them pleaded, and the matters and things in said rejoinder contained, in the manner and form as the same are pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his said action thereof against the said defendants, and that the plaintiff is not bound by the law of the land to answer the same, and this the said plaintiff is ready to verify; wherefore *wherefore* by reason of the insufficiency of the said rejoinder to plaintiff's said replications in this behalf, the said plaintiff pray judgment and his debt aforesaid, together with his damages and costs by him sustained on occasion of the detention thereof, to be adjudged to him, &c. And the plaintiff for cause of demurrer to the said rejoinder assigns the following, to wit: 1st. Said rejoinder is double. 2d. The rejoinder is argumentative. 3d. The rejoinder seeks to go behind the order and judgment of this court in reference to the order of appropriation in said replication mentioned. 4th. The rejoinder sets up no good and legal matter of defence, and is in other respects informal, uncertain, and insufficient, in substance and form.

TOPP & MILLER, *for plaintiff.*

Joinder in demurrer to rejoinder.

UNITED STATES OF AMERICA,
In the district court, for the northern district of Mississippi.

At December term, 1846.

AARON ROSS, use, &c.,
vs.
SMITH HOGAN and others.

And the said defendants say, that their said rejoinder and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having and maintaining his aforesaid action thereof against them, the said defendants; and the said defendants are ready to verify and prove the same, when, where, and in such manner as the said court here shall direct and award; wherefore, inasmuch as the said plaintiff hath not answered the said rejoinder, nor hitherto in any manner denied the same, the said defendants pray judgment, and that the said plaintiff

may be barred from having or maintaining his aforesaid action thereof against these defendants.

DAVIS & GOODWIN, *Att'y for defts.*

Afterwards, to wit, on the aforesaid 11th day of December, 1846, being a day of the December term, 1846, aforesaid of said court, the further proceedings were had in said cause, to wit:

AARON ROSS, use, &c.,
vs.
SMITH HOGAN, Arthur S. Hogan, and Reuben Y. Reynolds, &c. } 401.

Friday, December 11th, 1846. This day came on the plaintiff's demurrer to the defendants' rejoinder to be argued, and after being argued by counsel, and the matters of law arising being by the court fully understood, it is therefore considered by the court, that said demurrer be sustained; and it is ordered by the court that the defendants have leave to answer over, which they decline to do; and it is further considered by the court, that for anything in and by said rejoinder alleged, the plaintiff hath a right to have and maintain his aforesaid action; and thereupon, by consent of parties, this cause is continued until the next term of this court.

Afterwards, to wit, on the 8th day of June, being a day of the June term, 1847, of said court, the following proceedings were had in the foregoing cause, to wit:

AARON ROSS, use of Robert Patterson,
vs.
Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds. } 401.

Tuesday, June the 8th, 1847. This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit, jury No. 1, being William W. Moore, and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, but before retiring to consult of the same, by leave of the court and consent of parties, Matthew Brooks, one of said jury, was withdrawn. Whereupon by consent of parties, it is ordered by the court that this cause be continued, and that defendants recover of plaintiff the costs in this behalf at the present term.

Certificate of clerk of southern dist., Miss., filed 6th day of December, 1847, as follows, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.
Circuit court, U. S.

At a circuit court of the United States, in and for the ninth circuit, district aforesaid, began and held at the town of Jackson, in the said district, on the first Monday of November, A. D. 1843.

Present, the Hon. Peter V. Daniel, and Hon. Samuel J. Gholson, judges.

Among other proceedings were the following, to wit : .

SMITH HOGAN
vs.
AARON ROSS. } 401.

In chancery, transferred from district court, U. S., northern district of Mississippi. Dismissed by order of complainant's solicitors.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing is truly copied from the minutes of said court, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at Jackson, this 5th day of November, A. D. 1847, and of the independence of the United States the 72nd.

W. H. BROWN, *Clk.* [SEAL.]

I, Samuel J. Gholson, one of the judges of said circuit court, do hereby certify, that William H. Brown, whose name is affixed to the foregoing certificate, is, and was at the time of signing the same, clerk of said court, and that his attestation is in due form of law.

Given under my hand and seal, this 5th day of November, A. D. 1847. S. J. GHOLSON. [SEAL.]

Defendants' demurrer to plaintiff's testimony, filed Dec'r 8th, 1847, in the words and figures following, to wit :

THE UNITED STATES OF AMERICA,
Northern district of Mississippi.

At the December term, 1847.

AARON ROSS, use of Robert Patterson,
vs.
Smith Hogan, Arthur Hogan,
and Reuben Y. Reynolds.

This cause came on to be tried at this term of the court. Whereupon the plaintiff by his attorney *read to the jury* his declaration, and the pleadings in the cause, which are in the words and figures following, to wit. (The foregoing declaration and pleadings will be here read.)

The plaintiff, by his attorney, then read to the *jury*, as evidence in said cause, a copy of a bond with the certificates, with conditions, which is in the words and figures following, to wit. (Here read the bond, conditions, and certificates, on pages 5 and 6, of this transcript.) The plaintiff, by his counsel, then read to the JURY, as evidence in said cause, a paper in the words and figures following, to wit. (Here read certificate of clerk of circuit court, U. S., southern district of Mississippi, on pages 25 and 26 of this transcript.) And thereupon the plaintiff

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closed his testimony in said cause. And the said defendants, by their attorneys, come and defend the wrong and injury, when, &c., and say that said evidence, and the matters and things therein contained, in manner and form as the same are above stated and set forth, *and were read to the* JURY, are not sufficient in law for the said plaintiff to maintain the issue joined in this cause upon, and this the said defendants are ready to verify. Wherefore, by reason of the insufficiency of the said evidence in this behalf, the said defendants pray judgment, that the said plaintiff may be barred from having and maintaining his aforesaid action thereof against them.

DAVIS, LINDSEY & GOODWIN,
Atto. for defendants.

Afterwards, to wit, on the 8th day of December, being a day of the December term, 1847, the following proceeding were had in the foregoing cause, to wit:

" Aaron Ross, who sues for the use of Robert Patterson,
vs.
Smith Hogan, Arthur S. Hogan, Reuben Y. Reynolds.

Wednesday, December the 8th, 1847.

This day came the parties by their attorneys, and thereupon came on to be heard defendants' demurrer to plaintiff's testimony, which is continued over for argument."

And afterwards, to wit, on the 10th day of December, being a day of the December term last aforesaid of said court, the further proceedings were had in said cause, to wit:

AARON ROSS, use of Robert Patterson,
vs.
Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds. } 401.

Friday, December the 10th, 1847.

This day came the parties by their attorneys, and it appearing to the satisfaction of the court that defendants have filed no plea to the second count in plaintiffs' declaration, but have therein wholly made default. It is therefore considered by the court, that plaintiff recover of defendants the sum of six thousand three hundred and fifty-four dollars and ten cents debt, in the said second count in the declaration mentioned, and also the costs in this cause expended. And the plaintiff, by attorney, comes and remits the sum of twenty-six hundred and sixty-two $\frac{78}{100}$ dollars, being part of the judgment above mentioned.

Defendants' motion in arrest of judgment, filed and entered Dec. 10th, 1847, as follows, to wit:

AARON ROSS, use of, &c.,
vs.
SMITH HOGAN and others. } 401.

The defendants move the court to arrest the judg't in this case:
1. Because the court cannot pronounce a final judg't upon the second count in the declaration.
2. For other causes. DAVIS & GOODWIN.

Also, afterwards, to wit, on the 11th day of December, being a day of the December term of said court last aforesaid, the further proceedings were had in the foregoing cause, to wit:

"AARON ROSS, use of Robert Patterson,
vs.
SMITH HOGAN, Arthur S. Hogan, and Reuben Y. Reynolds.

Saturday, December the 11*th*, 1847.

This day came the parties, by their attorneys, and then came on to be heard defendants' demurrer to plaintiff's testimony; in which said demurrer the plaintiff was ordered to join, but refused to join, and thereupon dismissed the first count in his declaration set forth; whereupon the defendants demanded judgment on the demurrer to the evidence for want of joinder thereto, which is refused by the court."

And also, afterwards, to wit, on the day and at the term last above stated, the further proceedings were had in the aforesaid cause, to wit:

"AARON ROSS, who sues for the use of Robert Patterson,
vs.
SMITH HOGAN, Arthur S. Hogan, and Reuben Y. Reynolds. } 401.

Saturday, December the 11*th*, 1847.

This day again came the parties, by their attorneys, and thereupon came on to be heard defendants' motion to arrest the judgment rendered in this cause on yesterday; and, after argument, it is considered by the court that said motion be overruled."

Writ of error bond, filed Dec. 20th, 1847, in the words and figures following, to wit:

"SMITH HOGAN, Arthur Hogan, and Reuben Y. Reynolds,
vs.
AARON ROSS, who sues for the use of Robert Patterson. } In error.

Know all men by these presents, that we, Smith Hogan, Arthur Hogan, Reuben Y. Reynolds, and William B. Hogan, all of the county of Monroe, and State of Mississippi, are held and firmly bound unto the above named Aaron Ross, who sues for the use of Robert Patterson, in the sum of seven thousand three hundred and eighty-two $\frac{64}{100}$ dollars, to be paid to the said Aaron Ross, who sues for the use of

Robert Patterson, his executors, or administrators; for which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 11th day of December, A. D 1847.

Whereas the above named Smith Hogan, Arthur Hogan, and Reuben Y. Reynolds hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the district court of the United States for the northern district of Mississippi; now, therefore, the condition of this obligation is such, that if the above named Smith Hogan, Arthur Hogan, and Reuben Y. Reynolds shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

SMITH HOGAN, [SEAL.]
REUBEN Y. REYNOLDS, [SEAL.]
AR. S. HOGAN, [SEAL.]
W. B. HOGAN. [SEAL.]

Sealed and delivered in presence of—
G. M. RAGSDALE, *Clerk*,
By SMITH HOGAN and R. Y. REYNOLDS,
WILLIAM BENNETT,
JOHN WILLIAMS,
S. J. GHOLSON, for W. B. Hogan.

"I approve of the above bond and securities.
Given under my hand and seal, this the 18th day of December, A. D. 1847.

S J. GHOLSON, [SEAL.]
Judge U. S. D. C. for Mississippi.

UNITED STATES OF AMERICA,
Northern district of Mississippi.

I, Gabriel M. Ragsdale, clerk of the district court of the United States, for the northern district of Mississippi, do hereby certify, that the above and foregoing thirty-one pages contain a full, true, and complete transcript of all the proceedings had in the aforesaid cause in said district court, as the same appears of record and on file in my office; and that the writ of error hereto annexed is the original, a true copy of which remains on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in Pontotoc, this 13th [L. S.] January, A. D. 1849.

G. M. RAGSDALE, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court before you, between Aaron Ross, who sued for the use of Robert Patterson, plaintiff, and Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds, defendants, a manifest error hath happened, to the great damage of the said Smith Hogan, Arthur S. Hogan, and Reuben Y. Reynolds, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are therefore hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States, the first Monday of De-
[L. S.] cember, A. D. 1847, and of the independence of the United States the 72d.

Issued the 20th day of December, A. D. 1847.

G. M. RAGSDALE,
Clerk of the district court of the United States for the northern district of Mississippi.